MINISTER FOR HOME AFFAIRS, MALAYSIA & ANOR. *a*

v.

JAMALUDDIN OTHMAN

SUPREME COURT, KUALA LUMPUR
ABDUL HAMID OMAR LP
HASHIM YEOP SANI CJ (MALAYA) *b*
AJAIB SINGH SCJ
[CRIMINAL APPEAL NO. 76/88]
24 FEBRUARY 1989

CRIMINAL LAW: *Detention under s. 8(1) of the Internal Security Act 1960 - Participation in a group formed for the purpose of spreading Christianity among Malays - Work camp - Seminars - Conversion of Malays - Scope of the Act - Article 11 of the Constitution - Subject to Clause (5) of Article 11.* *c*

The applicant who was detained under s. 8(1) of the Internal Security Act 1960 challenged *inter alia* the grounds of his detention. The Minister for Home Affairs filed an affidavit stating that he was satisfied that the detention of the applicant was necessary with the view to preventing him from acting in a manner prejudicial to the security of Malaysia. The important words of the grounds were that the applicant was involved in a programme to propagate Christianity amongst Malays. The trial Judge allowed the application on the grounds that the Minister had no power to deprive a person of his right to practise his religion as is guaranteed by the Constitution. The Minister appealed against the decision. *d*

Held: *e*

[1] The Minister has no power under s. 8(1) of the Internal Security Act to deprive a person of his right to profess and practise his religion which is guaranteed under Article 11 of the Constitution.

[2] Mere participation in meetings and seminars for the dissemination of Christianity among Malays cannot make a person a threat to the security of the country under s. 8(1) of the Internal Security Act. *f*

[3] The freedom to profess and practise one's religion is itself subject to the general laws of the country as expressly provided in Clause (5) of Article 11 of the Constitution.

[Appeal dismissed.]

Cases referred to: *g*

Minister for Home Affairs, Malaysia & Anor. v. Karpal Singh [1988] 3 MLJ 29

Mamat bin Daud & Ors. v. The Government of Malaysia [1988] 1 CLJ (Rep) 197; [1988] 1 SCR 168

Inspector-General of Police v. Tan Sri Raja Khalid bin Raja Harun [1988] 1 CLJ (Rep) 135

Legislation referred to:

Internal Security Act 1960, s. 8(1) *h*

For the appellants - Mohd. Raus bin Sharif, DPP

For the respondent - Lee Min Choon (Philip Koh with him) M/s. Lee, Perara & Tan

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Ramdas Tikamdas holding watching brief for Bar Council, Malaysia

JUDGMENT

Hashim Yeop Sani CJ (Malaya):

The respondent was detained pursuant to an order made under s. 8(1) of the Internal Security Act 1960 (the Act). According to the affidavit of the Minister for Home Affairs he was satisfied that the detention of the respondent was necessary with the view to preventing him from acting in a manner prejudicial to the security of Malaysia. This conclusion was apparently arrived at after receiving reports and information relating to the "conduct and activities" of the respondent. This is expressed in para. 3 of the affidavit of the Minister for Home Affairs dated 16 September 1988. The grounds for the detention of the respondent were contained in a statement made under s. 11(2)(b) of the Act which was served on the respondent.

It is already settled law in this country that whilst the grounds of detention order are open to challenge if alleged to be not within the scope of the legislation, the allegations of fact are not subject to review. This principle was reiterated in *Minister for Home Affairs, Malaysia & Anor. v. Karpal Singh* [1988] 3 MLJ 29. Thus the only question for us to determine here is whether the grounds are within the scope of the Act.

The trial Judge relied solely on Article 11 of the Federal Constitution on the freedom of religion as basis for his ruling that the detention of the respondent was unlawful. The crucial part of his judgment appears at p. 108 of the appeal record where he said when referring to s. 8 of the Act:

> Although under s. 8(1) of the Internal Security Act the Minister may detain a person with a view to preventing that person from "acting in any manner" prejudicial to the security of Malaysia, I am of the view the Minister has no power to deprive a person of his right to profess and practise his religion which is guaranteed under Article 11 of the Constitution. If the Minister acts to restrict the freedom of a person from professing and practising his religion, his act will be inconsistent with the provision of Article 11 and therefore any order of detention would not be valid.

Without hesitation we say that we agree wholeheartedly with the sentiment expressed by the learned Judge. However to get our perspective right we feel obliged to add a rider to what the learned Judge said. His Lordship's ruling must be read subject to the following. The freedom to profess and practise one's religion should not be turned into a licence to commit unlawful acts or acts tending to prejudice or threaten the security of the country. The freedom to profess and practise one's religion is itself subject to the general laws of the country as expressly provided in Clause (5) of Article 11 of the Constitution which states that:

> 11(5). This Article does not authorise any act contrary to any general law relating to public order, public health or morality.

This is also alluded to in *Mamat bin Daud & Ors. v. The Government of Malaysia* [1988] 1 CLJ (Rep) 197, 1988 1 SCR 168. Thus the protection conferred by Article 11 of the Constitution cannot be a complete umbrella for all actions.

Coming back to the present case the grounds for detention are reproduced from p. 21 of the appeal record as follows:

> **Alasan-Alasan Untuk Perintah Tahanan**
>
> Bahawa kamu, Jamaluddin bin Othman @ Yeshua Jamaluddin, sejak tahun 1985 hingga ditangkap pada 27 Oktober 1987, telah melibatkan diri dalam satu rancangan untuk menyebarkan agama Kristian di kalangan orang-orang Melayu. Kegiatan kamu itu boleh mendorong kepada timbulnya suasana ketegangan dan permusuhan di antara masyarakat Islam dengan masyarakat

Kristian di negara ini dan boleh memudharatkan keselamatan negara.

The important words in that statement are "telah melibatkan diri dalam satu rancangan untuk menyebarkan agama Kristian di kalangan orang-orang Melayu". Or in English "was involved in a plan or programme to propagate Christianity amongst Malays".

The grounds become clearer when we look at the allegations of fact contained in the statement. The first allegation concerned participation in a group (in November 1985) at the First Baptist Church, Jalan Pantai, Petaling Jaya called the "Philip Cheong's Group" said to be formed for the purpose of spreading Christianity among Malays. The second, third and fifth allegations concerned participation (in 1986) in a "khemah kerja" (work camp) and participation in a "seminar on Islamic consultation' (in Singapore). The fourth allegation alleged that the respondent converted into Christianity six Malays.

The sum total of the grounds for the detention was therefore the supposed involvement of the respondent in a plan or programme for the dissemination of Christianity among Malays. It is to be observed that the grounds do not however state that any actions have been done by the respondent except **participation** in meetings and seminars and that the fourth allegation alleged that the respondent converted into Christianity six Malays.

We do not think that mere participation in meetings and seminars can make a person a threat to the security of the country. As regards the alleged conversion of six Malays, even if it was true, it cannot in our opinion by itself be regarded as a threat to the security of the country.

As stated by this Court in *Inspector-General of Police v. Tan Sri Raja Khalid bin Raja Harun* [1988] CLJ (Rep) 135 the Act was enacted under Article 149 of the Federal Constitution and it is a legislation essentially to prevent and combat subversions and actions prejudicial to public order and national security.

In *Re Tan Sri Raja Khalid* the authority had stated that they had reason to believe that the substantial losses suffered by a bank (with deposits from members of the armed forces) caused by the manner in which loans were approved through the acts of the detainee/applicant could evoke feelings of anger, agitation, dissatisfaction and resentment amongst members of the armed forces which in turn could lead them to resorting to violent actions and thereby affecting the security of the country. The trial Judge there, thought it to be incredible, that losses sustained by a public bank where the depositors also included members of the public at large could result in any organized violence by the soldiers. This Court was of the view that it would be naive to preclude the Judge from making his own evaluation and assessment from an obvious statement of fact.

In the present case we are of the view that the grounds for the detention in this case read in the proper context are insufficient to fall within the scope of the Act. The guarantee provided by Article 11 of the Constitution i.e. the freedom to profess and practise one's religion must be given effect unless the actions of a person go well beyond what can normally be regarded as professing and practising one's religion.

The appeal is accordingly dismissed.

Also found at [1989] 1 CLJ 1044